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THE DISPUTE SETTLEMENTS OF INHERITANCE IN PALANGKA RAYA: A Legal Anthropology Approach

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Abstract

The issue of inheritance distribution does not often lead to conflicts that must be resolved by means of litigation. In resolving conflicts that might arise, the community usually has set a separate rule to distribute inheritance. The people of Central Kalimantan, especially in the City of Palangka Raya, prioritize deliberations that are actually not contrary to Islamic law in resolving their inheritance disputes. Why and how these dispute settlements are conducted? This study uses normative-empirical methods which employs a legal anthropology approach. The results of the study show that the tradition of resolving inheritance disputes in the people of Palangka Raya City of Central Kalimantan prioritizes peaceful settlement disputes by using Islamic law first and then a family meeting is held to determine the agreeable share and distribution of assets. The principle of kinship in the protection of property (hifz al-maal) in the family is adopted, so that the community returns to share property with the negotiation method which is built on family agreements. By referring to Islamic jurisprudence on inheritance, the dispute settlements also aims at sharia compliant in order to adhere to Islamic doctrine (hifz al-din). Finally, they also adopt the principle of responsive thinking

which is human based on local wisdom values in society. The conclusion of this study shows that the Palangka Raya City Society combines Islamic law and customary law in the distribution of inheritance.

Keywords: *dispute resolution, inheritance, Palangka Raya, legal anthropology*

Abstrak

Persoalan pembagian kewarisan tidak jarang menimbulkan konflik yang harus diselesaikan. Dalam menyelesaikan konflik yang mungkin timbul tersebut, masyarakat biasanya telah menentukan suatu aturan tersendiri untuk menyelesaikan pembagian kewarisan. Masyarakat Kalimantan Tengah khususnya Kota Palangka Raya dalam penyelesaian sengketa waris, mengedepankan musyawarah yang sejatinya tidaklah bertentangan dengan hukum Islam. Penelitian ini menggunakan metode normatif-empiris. Hasil penelitian menunjukkan bahwa tradisi penyelesaian sengketa kewarisan pada masyarakat Kota Palangka Raya Kalimantan Tengah mengedepankan perdamaian dengan cara menggunakan hukum Islam terlebih dahulu kemudian dilakukan musyawarah keluarga untuk bersepakat menentukan bagian dan pembagian harta. Tradisi tersebut dilakukan dengan cara yang digabung atau due procces dispute resolution kewarisan. Sikap mental masyarakat tetap membagi harta secara Islam, kemudian harta digabung dengan nilai kemanusiaan (humanis). Adanya asas kekeluargaandalam perlindungan terhadap harta (hifzul maal) dalam keluarga, sehingga masyarakat kembali membagi harta dengan metode islah yang dibangun berdasarkan kesepakatan kekeluargaan. Masyarakat Kota Palangka Raya melaksanakan prinsip ta'abbudi dalam

konteks menjalankan hukum faraid yang juga bertujuan syariat (maqashid syariah) memelihara agama (hifzul din) kemudian menjalankan prinsip ta'aqqulli berupa ijtihad responsif yang bersifat humanis berdasarkan nilai-nilai kearifan lokal (local wisdom) di masyarakat. Kesimpulan penelitian ini menunjukkan bahwa Masyarakat Kota Palangka Raya menggabungkan antara hukum Islam dan hukum Adat dalam pembagian harta warisan.

Kata kunci: penyelesaian sengketa, kewarisan, Palangka Raya, antropologi hukum

A. Introduction

Central Kalimantan is one of the provinces in Indonesia located on the island of Borneo. The capital is the city of Palangka Raya. Central Kalimantan has an area of 153,564.50 km.² Based on the 2017 census, this province has a population of 2,526,014 people. Central Kalimantan has 13 districts and 1 city.¹ Based on data from the 2010 statistical center on ethnicity and religion in Palangka Raya, it shows that there are three dominant ethnic groups in Central Kalimantan are Dayak (46,62 %), Javanese (21,67%) and Banjar (21,03%). Meanwhile, the religions adopted in this Province are Muslim majority (74,31%), Catholic-Protestant Christians (18,60%), Kaharingan (6,62%), Hinduism (0,50%) and Buddhism (0,10%).²

The population in 2017 was 2,526,014 people with a ratio of 49% women and 51% men. Comparison of the area with population shows that the population density of

¹ Dinas Kehutanan Kalimantan Tengah, Kondisi Daerah, <https://dishut.kalteng.go.id/page/37> kondisi-daerah

² Badan Pusat Statistik Provinsi Kalimantan Tengah, Penduduk Menurut Wilayah dan Agama yang Dianut, <http://sp2010.bps.go.id/index.php/site/tabel?tid=321&wid=6200000000>

Central Kalimantan Province is classified as less dense, namely 12 people/Km. If observed according to regencies and cities there is a significant difference in population density, where the city of Palangka Raya as the provincial capital of Central Kalimantan is a city with the highest density of 71,50 people/Km², while North Barito Regency is a district with the lowest population density of 6,30 people/Km².³ because of the large number of people in the palangka raya city, which consists of various ethnic groups, cultures, customs and religions, there are differences in the way in which inheritance is distributed.

In resolving conflicts that might arise, the community usually has set a separate rule to resolve inheritance. The people of Central Kalimantan especially the Katingan Regency and the City of Palangka Raya, also have their own traditions on distributing inheritance. The presence of Islam in Indonesia cannot be separated from the traditions or culture of Indonesian society. Religion and culture are two things that interact and influence each other.⁴ Religions in the perspective of social sciences area value system that contains a number of perceptions regarding the constructions of reality. According Zulfa_Jamalie, religion plays a major role in explaining the structure of normative and social order and understanding and interpreting the world around.⁵ Tradition or culture is an expression of creativity, work, and human intention (in certain societies) which contains values and messages of religiosity, philosophical insight and local wisdom (local wisdom, local genius). The struggle of interactions between Islamic law

³Pemerintah Provinsi Kalimantan Tengah, Informasi Umum, https://kalteng.go.id/INDO/informasi_umum_kalimantan_tengah.htm

⁴Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia*, 3rd edition, Jakarta: Balai Pustaka, 2005; 1208.

⁵ZulfaJamalie, "Akulturasi dan Kearifan Lokal dalam Tradisi Baayun Maulid pada Masyarakat Banjar", in *el-Harakah Journal*; 238.

and custom since the colonial era gave rise to the contact theory that once prevailed in Indonesia such as the theory of *receptio in complexu*, receptive theory, *receptio exit* theory, and the theory of *receptio a contrario*. The theory of *receptie in complexu* was pioneered by Lodewijk Willem Cristian van den Berg in 1845-1925. This theory states that religious law could be applied for them in their district territory. *Receptie* theory was stated by Cristian Snouck Hurgronje (1857-1936). The *receptie* theory literally means acceptance or meeting. Terminologically, this theory means that customary law as recipient and Islamic law as accepted. The *receptio exit* theory was pioneered by Hazairin, who stated that the old law was still valid if it did not conflict with the 1945 Constitution, besides that he also said that the *receptie* theory was no longer valid because it was contrary to the Qur'an and sunna. The theory of *receptio a contrario* is a development of the theory put forward by Hazairin which reveals the relationship between customary law and Islamic law.⁶

According to the theoretical study it was emphasized that for Muslims in the field of inheritance it is very difficult to avoid the link between Islamic law and tradition. This is because in Islamic teachings it does not prohibit Muslims from accommodating tradition as long as they do not get any contradictive value with the main sources of Islamic law, namely the Qur'an and hadith.⁷

⁶Rasyid, Muh Haras. "Dinamika Hukum Islam Dan Aktualisasi Teori-Teori Berlakunya Hukum Islam Di Indonesia." *DIKTUM: Jurnal Syariah dan Hukum* 11.1 (2013): 15-23.

⁷Abdullah Saeed, *Freedom of religion, apostasy and Islam*. (Routledge, 2017)

The diversity of implementation of Islamic law in various Islamic countries⁸ also implies the anthropological approach of Islamic law. Anthropology shows the importance of providing a broader interpretation, so that the values and messages of the Quran can be concretized in different cultures. From this perspective, religion and social interaction with various cultures can be learned. The theory used to see this interaction pattern is the theory of acculturation, assimilation, or enculturation. Besides that, the analysis can be sharpened by the theory of structuralism, functionalism, and symbolism. Structuralism theory views society as a system consisting of elements of a system that are interrelated and work in accordance with their respective functions. Thus, every existing system contributes to a balance. Functionalism is a philosophical theory that considers mental phenomena in dynamic unity as a system of functions for satisfying needs that are biological in nature. Functionalism sees society as a system of several parts that are interconnected with one another. Overall the core of symbolism theory is that humans do not interact directly but through symbols which are mostly in the form of words both verbally and in writing.⁹

⁸ for the diversity of the implementation of Islamic inheritance law in the Sharia Courts of Indonesia due to the difference of child (walad) concept, see e.g., Ana Amalia Furqan, Alfitri Alfitri, Akhmad Haries, "The Difference of a Child (Walad) Concept in Islamic Inheritance Law and its Implications on The Decisions of the Religious Courts in Indonesia," *Mazahib Jurnal Pemikiran Hukum Islam*, Vol. 17, No. 2 (2018), pp. 119-146.

⁹ Herien Puspitawati, "Konsep dan teori keluarga." *Departemen Ilmu Keluarga dan Konsumen Fakultas Ekologi Manusia-Institut Pertanian Bogo Diakses di: <http://ikk.fema.ipb.ac.id/v2/images/karyailmiah/teori.pdf>* (2013).

There are two ways of distributing inheritance in a family manner in the district of Jekan Raya, Palangka Raya City. The first, the division which done with the way agreement the family and the based to testament of the inheritor in moment still living, whereas the impact of the division of inheritance with the way amicably which was done based on the message of inheritor before died to the heirs to divide of inheritance with the way amicably it is the positively impact¹⁰

Paying attention to the tradition of settling disputes in Central Kalimantan Community Disputes, especially in the City of Palangka Raya which prioritizes deliberation, it is not get any contradicted value with Islamic law. However, if it is related to the principle of inheritance law, there will be contradictions, because with the deliberation in resolving inheritance disputes in the community, it is unknowingly ignoring or even forgetting the provisions of Islamic law so that it is unfortunate for the existence of inheritance in Islamic law. Islamic law is a law that adequately accommodates customary law, in fact customary law is often accepted as a legal law as long as it does not conflict with Islamic law.¹¹ Therefore, reviewing the relationship between Islam and tradition in the field of inheritance is something that is difficult to avoid in the lives of Muslims including the people of the City of Palangka Raya in Central Kalimantan.

¹⁰Utami. "Tradisi Masyarakat Muslim Dalam Membagi Harta Warisan Secara Kekeluargaan (Studi Di Kecamatan Jekan Raya Kota Palangka Raya)." *Jurnal Studi Agama dan Masyarakat* 12.2 (2016): 197-213.

¹¹Habiburrahman, *Rekonstruksi Hukum Kewarisan Islam di Indonesia*, (Jakarta: Kencana Prenada Media Group, 2011); 81.

B. A Legal Anthropology Approach to the Community Dispute Settlement

Understanding the dialectic of law setting in Al-Qur'an also means having knowledge of the reciprocal relationship between law and social phenomena empirically in people's lives. Revelation of the Qur'an with the legal tradition of Arab society met and engaged in dialogue, as seen in the gradually stipulated laws. Gradual determination of the law of the Qur'an shows how the function and performance law, both as a means of social control (social control) or a means maintaining social order (social order) in society.¹² Research on the functioning and legal work in a community culture is a study in legal anthropology.

Legal anthropology approach is used to view Islamic law as a system, which basically contains three elements; namely: the structure of the legal system, the substance of the legal system, and the culture of public law (legal culture).¹³ The structure of the legal system is Sharia which is the holder of legal authority, which in this case includes who is the Judge in Islamic law, whether only Allah and His Messenger, or also includes the thinker. In terms of its source, Islamic law is divine law because it is based on the transcendent revelation of God, but in terms of its legal implementation.¹⁴ The substance of the Islamic legal system lies in the fundamental values or norms contained in the rule of law. This element is universal, so worth

¹²Ali, Sodikin, "Antropologi Hukum sebagai Pendekatan dalam Penelitian Hukum Islam." *Al-Manahij: Jurnal Kajian Hukum Islam* 7.1 (2013): 115-126.

¹³ Mohd Winario. "Masalah Hukum Islam Perspektif Sosiologi Antropologi Hukum." *Jurnal Al Himayah* 1.2 (2017): 261-276.

¹⁴TO Ihromi, *Antropologi dan Hukum*, Jakarta: Yayasan Obor Indonesia, 1984); 8

evident.¹⁵ Consequently, this value must be applied and become the basis for establishing Islamic law.

The third element, namely the legal culture of society, is the local aspect contained in the rules of Islamic law, which is located as an instrument in implementing fundamental values.¹⁶ This culture relates to values, expectations, and beliefs that are manifested in people's behaviour in perceiving the law. This element is very open to change or adaptation, which is when applied to people who have different legal values and perceptions.¹⁷

The crucial issue that must be given attention in this model of research is to maintain the structure and legality of Islamic law. The use of a legal anthropology approach is not intended to reduce the authority of the Qur'an as the highest source of law. The use of rationality in this approach is not to question the legality of legal sources, but to clarify the intrinsic dimensions of law enforcement in this Qur'an. Therefore, it is necessary to minimize the tendency of epistemological secularization, by not changing something which is status.

Research on acculturation between Islamic law and local culture aims to explain the integration between Islamic law and local culture. The interaction between Islamic law and local culture is an attempt to indigenize Islamic law. In its history the spread of Islam has always led to contact with other cultures. Even since the time of revelation, the Qur'an has carried out dialectics with the culture of the recipient community. This is where the enculturation of the values of the Qur'an took place into

¹⁵Kholidah, Kholidah. "qathi'dan zhanni menurut masdar farid mas'udi." *fitrah: Jurnal Kajian Ilmu-ilmu Keislaman* 2.1 (2016): 19-36.

¹⁶Abdul Halim, Barkatullah. "Budaya Hukum Masyarakat dalam Perspektif Sistem Hukum." *Jurnal UKSW* (2013).

¹⁷Syamsudin, Muhammad. "Korupsi Dalam Perspektif Budaya Hukum." *Jurnal Fakultas Hukum UII* 30.64 (2007).

the culture of the Arab community at that time. The results of this enculturation gave rise to the concept of cultural reproduction. The basis of the implementation of this concept is monotheism and the example of the Prophet Muhammad as a cultural agent. This concept should be applied as a theoretical framework is the dialogue between Islam and local culture in the present.¹⁸

The study of legal anthropology to see the interaction between Islamic law and local culture must pay attention to the following points. First, using the reproductive paradigm of the Qur'an, which is done through the stages of adoptions, adaptation and integration. Here in lies the importance of appreciating cultural differences in each community group. Based on his instincts, human develop the power of creativity, initiative, and work that culminates in the creations of ideas, or artefacts that are forms of culture. Second, prioritizing reconstructive and not destructive efforts; the culture of society must be seen as something noble because it is the crystallization of people's thoughts and efforts. Thus the efforts to dialogue with Islam must be sought for the same elements not different or contradictory. This will make it easier to acculturate the universal teachings of the Qur'an into it. Third, prioritizing tolerance toward particular variations; local culture must be a medium or tool of transfer for the transformation of Islamic teachings. Authenticity does not mean an effort to uniform culture among Muslims, because from the beginning the Qur'an tolerated various differences as long as it did not conflict with its basic principle, namely monotheism. This was proven in reforming the social order

¹⁸Ali Sodiqin, *Antropologi Al-Qur'an, Model Dialektika Wahyu dan Budaya*, (Yogyakarta: Arruz Media, 2008); 63

of the Arab community of the Qur'an using a cultural approach.¹⁹

The practice of local culture is the basis for implementing Islamic teachings. The existence of traditions or existing socio-cultural institutions is maintained as long as they do not conflict with the universal teachings of the Qur'an. The position of the Qur'an becomes a guiding line for the process of enculturation of the running customs. Thus the community can Islam without having to lose their traditions. Here in lies the authenticity of Islam, which is when the community carried out the teachings of its religion in its cultural context. The description above explains that the law in society is influenced by several things, including religion and belief. Rules or religion law, customary law originating from local beliefs integrates and influences behaviour and legal events in society. In the eyes of legal anthropology, the connection between the behaviour of human law and its legal culture lies in its response to ideological and practical law.²⁰

C. The Application of Inheritance Law in Settling Inheritance Disputes in Palangka Raya City

The distribution of inheritance, which is based on the agreement between the heirs, is carried out on the advice of the most dominant heirs. This method can be said to be the customary distribution of inheritance. The parts obtained by each heir are not the same and some share the inheritance to one or the heirs that have been mutually agreed upon. Therefore, the following is a legal explanation

²⁰Hilman Hadikusumah, *Antropologi Hukum Indonesia*, cet. ke-3, Bandung: Alumni, 2010); 53

regarding the distribution of inheritance carried out in a family manner or based on mutual agreement.

Conceptually the application of the tradition of settlement of inheritance disputes by first distributing inheritance to each heir in Islamic law. After ensuring that each of them has full rights to inheritance, the inheritance has been properly and legally divided. Furthermore, each family of heirs is allowed to help each other's siblings who get a small quota or even want to give all their rights from the inheritance.

Conceptually there are detailed rules for the distribution of inheritance in Islam so that there is no dispute between fellow heirs after the person whose property is inherited. Islamic law requires that the distribution of inheritance is fair. The main purpose of the distribution of inheritance in Islamic law is that the sharing of inheritance to the truly entitled so that there is no person who takes the rights of others in a way that is not lawful.²¹ If someone has died, then the inheritance has been separated from his property and transferred to someone else, namely the person who became his heir. This is based on deliberation and agreement between the heirs in this case to prevent disputes and also consider the interests and needs of the heirs in accordance with the conditions or in other words pay attention to the benefit of other heirs.

Thus as the fulfilment of Islamic legal authority, in resolving inheritance disputes in the people of Palangka Raya City also implements Islamic Sharia which has been explained in the Quran and Sunnah by asking for opinions from leaders or scholars who understand the science of inheritance law then conduct deliberation with agreement

²¹Badriyah Harun, S. H. *Panduan Praktis Pembagian Waris*. (Yogyakarta: Pustaka Yustisia, 2009)

to help other heirs in the context economy (property/maal). In other words, mutual help in kindness is ordered in Islamic teachings. Likewise, relating to the distribution of inheritance for those entitled to receive, it must be carried out so that disputes do not occur which also become the goal of Sharia in carrying out the commands of Allah SWT in the context of maintaining religion. In connection with *hifzul māl*, there are several lessons on the distribution of inheritance with the concept of Islamic law; among others are: 1) Maintaining family integrity. Distribution of inheritance is directly related to property, if not given based on the provisions (details of the part) is very easy to cause disputes among heirs. This is because human nature is very happy with assets. 2). As a means to prevent misery or poverty of heirs. It can be seen that the Islamic inheritance system gives as much as possible to the heirs and relatives. The inheritance is not only for the children of the heirs, but for the parents, husband and wife, brothers and sisters, grandchildren and even grandparents. 3) As a means of prevention from the possibility of hoarding wealth to someone. With the detailed rules regarding the distribution of inheritance, it is expected that each heir will get the right accordingly proportionally.²²In addition, the wisdom of inheritance itself is very large, namely strengthening the relationship between family relationships. In principle, inheritance is very useful for humans to occur in cooperation, love each other and provide benefits to relatives of heirs who are left to commemorate the goodness of the property owners who have died also included in the context of maintaining property.

The customary inheritance law itself is divided into customary inheritance law, which are different from each

²²Sa'adah, Sri Lum'atus. "Maqashid Al-Syari'ah Dalam Hukum Kewarisan Islam." (2015). *AL-AHWAL* vol. 7. No.1

other region. As a result of the circumstances stated, the inheritance law in the force in Indonesia today still depends on which inheritance law applies to the deceased. The choice of law to determine inheritance law is based on recognized inheritance legal pluralism in Indonesia.²³

If viewed through a legislative approach, Islamic inheritance law applies to those who are Muslim as stipulated in the Compilation of Islamic Law and Law on the Procedure of Religions Courts Number 7 of 1989 jo. Law No. 3 of 2006 concerning specifically Article 49 paragraph 1 letter (b) which states that religious courts have the duty and authority to examine, decide and settle cases in the first level between people who are Muslim in the field of inheritance. Furthermore, in paragraph 3 states “inheritance field as referred to in paragraph 1 letter (b) is the determination of who is the heir, the determination of the inheritance, determining the portion of each heir and carrying out the distribution of the inheritance”. Seeing this article it is clear that for those who are Muslim formally (procedural law) must comply with Law Number 7 of 1987 jo, Number 3 of 2007.

In addition to using the litigation path through the Religious Court, settlement of inheritance disputes also recognize the existence of non-litigation lines (outside the court) using alternative dispute resolution (ADR) or alternative dispute resolution. The parties in resolving inheritance disputes through alternative dispute resolution (ADR) way, both in the firm using mediation, negotiations, consultations, facilitation, and others. The ability to settle cases outside the court is governed by article 1851, 1855, 1858 KUH Perdata, explanation of Article 3 of Law No. 14 of

²³Supriyadi, *Pilihan Hukum Kewarisan dalam Masyarakat Pluralistik (Studi Komparasi Hukum Islam dan Hukum Perdata)*, Jurnal Al-'Adalah, Vol. XII, No. 3, June 2015; pp 554-555.

1970 and Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, then it is possible for parties to resolve disputes by using institutions other than courts (non litigation), such as arbitration and consensus agreement or peace (islah).²⁴ Completion of alternative dispute resolution (ADR) is a settlement that has indirectly existed in the lives of the people of Katigan Regency and City of Palangka Raya which is neatly planted and cultivated in the lives of the people. Dispute resolution using alternative dispute resolution (ADR) or alternative dispute resolution is very easy to understand, simple and fact resolving disputes, especially inheritance disputes that occur in the people of Palangka Raya City.

When viewed from the conceptual approach, the enforceability of inheritance law is subject to the law adopted by the heirs as happened in the tradition of the people of the City of Palangka Raya, for those who are Muslim subject to Islamic law then carry out customary inheritance law. This is because the inheritance legal system adopted in Indonesia includes: Islamic inheritance law, Customary inheritance law, and inheritance law according to the Civil Code.

Formally in Indonesia, this method is accommodated in the Compilation of Islamic Law. Article 183 Compilation of Islamic law affirms that the heirs can agree make peace in the distribution of inheritance, after each is aware of its share. In this way the most important requirement that must be fulfilled is the agreement and willingness of the heirs. Furthermore, the heir can also abort his right no to obtain inheritance rights and give it to other heirs.

²⁴Syarif Dahlan dan Iwan Haryanto, *Eksistensi ADR dalam Penyelesaian Sengketa Harta Waris Pada Masyarakat Suku Samawa*, Jurnal IUS Kajian Hukum dan Keadilan, Vol. IV, No.2, Agustus 2018; 325.

Conversely, if the heirs, or among the heirs do not agree or are not willing to share the inheritance in a family member, then the distribution system is carried out according to the rules of faraid that have been explained by the Qur'an and sunnah in the Indonesian context, according to legislation that has explained that matter. The distribution of inheritance in a family manner can be driven by consideration of the differences in the economic conditions of some heirs who are better than other heirs, so that the inheritance is expected to help their living conditions more. Another reason may be due to consideration of the heirs that one or more of them is more involved in managing the heirs and so on. Thus it becomes logical if they get more shared as long as the parties agree on these principles and have known their respective rights.²⁵

Based on the above, the tradition of settlement of inheritance disputes in the people of Palangka Raya City still imposes the theory of Islamic legal authority with the enactment of faraid law and the conducted family consultations with the principle of peace and adjusting economic conditions. With the existence of a humanitarian mission as a guarantee of protection of property (*hifzul maal*) in the family, so that the community returns to share property with the peace method which is built based on family agreements. The people of Palangka Raya City carry out the principle of worship in the context of carrying out the inheritance law which also aims at sharia (*maqāshid syar'ah*) to maintain religion then to carry out the principle of think responsive *ijtihad* based on local wisdom values in society.

²⁵FatahuddinAzisSiregar, *Pembagian Harta Warisan Menurut Al-Qur'an dan Sunnah*, Jurnal Fitrah, Vol. 8, No. 1, January-June 2014; 119-120.

D. Analysis of the Settlement of the Community Inheritance Dispute in Palangka Raya City

Tradition is defined as traditional hereditary customs (from ancestors) that are still carried out in the community; assessment or assumption that existing methods are the best and right.²⁶ The definition of dispute resolution is in the process or effort to restore the relations of the parties, namely the family members in dispute in their original condition. With the return of the relationship, the parties or family members in dispute can establish relations, both social relations and legal relations with one another. Meanwhile, what is meant by inheritance according Big Indonesian Dictionary, is something inherited, such as property, good name; inheritance.²⁷

John Berry provides his definition of acculturation, namely the process of cultural and psychological changes that occur as a result of contracts between two or more groups and members of each group.²⁸ According to Koenjaraningrat, acculturation is an issue in anthropology that has the meaning of cultural contact. This concerns the concept of social processes that arise when a group of people with a particular culture is confronted with elements of foreign culture so that the foreign elements are gradually accepted and processed into their own culture without causing loss of cultural personality.²⁹ Supporting factors for cultural acculturation include: (1) the social contact that occurs in the community; (2) The existence of cultural

²⁶Tim Penyusun Kamus Pusat Bahasa, *Kamus Besar Bahasa Indonesia*, artikel “tradisi”;1208.

²⁷*Ibid.*,artikel “warisan”; 1269.

²⁸Berry, John W.,et al. *Cross-cultural psychology: Research and applications*. Cambridge University Press, 2002.

²⁹<https://jdih.katingankab.go.id>Koentjaraningrat, *Pengantar Ilmu Antropologi*, Rineka Cipta, Jakarta, 2005.

contacts in relationships; (3) Cultural conflict between the authorities and those controlled through cultural, economic, language, scientific, technological, social, religious and artistic elements; (4) Cultural contact between majority communities and minority communities; and (5) Cultural contact between socio-cultural systems in the form of values and norms.³⁰

The tradition of resolving inheritance disputes if viewed based on a historical approach, the tradition of settlement of inheritance disputes is carried out for generations by the people of Palangka Raya City. Based on the conceptual approach, basically knowing and acknowledging about the settlement of inheritance disputes carried out by Islamic law. In addition, settlement of inheritance disputes is also carried out with existing traditions, namely prioritizing deliberation in determining the inheritance section by adjusting conditions and conditions such as economic conditions and the needs of heirs. This shows a growing pattern in the people of Palangka Raya City in resolving inheritance disputes by exploring the values of local wisdom in the community and promoting the principle of peace. Looking at the phenomena that occur in this case, basically mentioned in article 183 Compilation of Islamic Law (KHI)³¹ that the heirs can agree to make peace in the distribution of inheritance after each of them realizes its share.

The tradition of inheritance dispute resolution carried out by the people of Palangka Raya is very relevant to the meaning of article 183 KHI, giving the meaning that the heirs may not distribute inheritance by deliberation before the public knows the procedure for the distribution of

³⁰Berry, J. W. "20. Psychology of acculturation." *The culture and psychology reader* 457 (1995).

³¹Lihat, Kompilasi Hukum Islam (KHI) Pasal 183.

inheritance legally by Islamic inheritance. Otherwise, heirs are allowed to conduct deliberations after they know their inheritance rights either directly through the knowledge they have about Islamic inheritance law or through inheritance experts who convey to them.

The settlement of the civilized disputes of the community of Palangka Raya City that distributes inheritance property by conducting Islamic law counting then concludes it with community settlement by means of customary law. The tradition of settlement of inheritance disputes through the practice or the way in which to distribute the inheritance property in Palangka Raya City is as follows: first, the method of distributes is carried out by agreement between families. Based on the distribution of inheritance with suggestions from one or more family members who are elder or collect all family members. Second, distribution of inheritance is carried out in Islamic law first and then conducted deliberations by taking into account the conditions and economic conditions of the heirs in need. This is because the distribution is based on the needs or necessary, and the economic conditions of the heirs who receive it. Finally, the method used (combination of Islamic law and customary law settlement of deliberations and family agreement) is aimed at preventing disputes. This division was carried out based on a way that was always done in their families for generations.³²

The tradition of inheritance dispute settlement according to customary law, does not recognize the method of distribution by mathematical calculations, but is always based on consideration by considering the objects and needs of the heirs concerned. Observing the

³²This is as stated by some informants UK, RS, EN, WH, and JP di Kota Palangkaraya.

implementation of the tradition of the distribution of inheritance above, is associated with the concept of hereditary habits from ancestors that are still carried out in the community and the tradition is an act that is considered true by the local community.

If examined through a historical and conceptual approach, the distribution is based on kinship to the heirs after being distributed in Islamic law. The informants who use the distribution of inheritance in this way are patterns that occur from the traditions of the community that have been handed down for generations and are considered to have psychological beliefs and are carried out repeatedly as part of wisdom of local communities.

Conceptually, inheritance law in the community in the City of Palangka Raya can create harmony and balance in the lives of families and communities to avoid conflicts that are likely to occur. In Islamic law there are some benefits that are felt by the heir when there is a share of inheritance, namely creating peace of life for those who carry it out and building the highest values of justice. If this justice will be implemented, it will automatically prevent emerging in the family or community.³³

The combination of Islamic law and customary law shows a pluralistic situation. This can be seen from the enactment of various legal systems of the Palangka Raya City community inheritance, namely Islamic inheritance law, civil inheritance stipulated in the Civil Code and customary law. This legal diversity is still added to by the customary inheritance law that applies in reality is no single, but also varies according to the form of society and the family system of Indonesian society. It can be said that

³³Syarif Dahlan dan Iwan Haryanto, *Eksistensi ADR dalam Penyelesaian Sengketa Harta Waris Pada Masyarakat Suku Samawa*, Jurnal IUS Kajian Hukum dan Keadilan, Vol. IV, No.2, Agustus 2018; 324.

the law of community inheritance in the City of Palangka Raya is influenced by the family system of society.³⁴ As a result, inheritance forms and systems in Indonesia experience inheritance legal pluralism that is valid and carried out by the community in accordance with their sense of justice.

The pluralism of inheritance system in Palangka Raya City community can be seen in inheritance law that is used, namely Islamic inheritance law, civil inheritance law originating from the Civil Code and customary inheritance law originating from the law that lives in each region. Islamic inheritance law applies to those who are Muslim as stipulated in the Compilation of Islamic Law and in the Religious Courts Law No. 7 Year 1989 as amended by the Law No.3 Year 2006.

If observed from the tradition of resolving community inheritance disputes in the City of Palangka Raya in the view of Islamic law, the aim is to be able to solve the inheritance problem in accordance with religious provisions and not to be harmed and consumed by otherwise. In addition, the distribution of inheritance can be beneficial for himself and the surrounding community. The tradition of resolving the inheritance dispute in the city of Palangka Raya in Central Kalimantan is the habit of resolving with deliberation and then deliberations to determine the share and distribution of assets. The tradition is carried out in a combined way, namely through the science of inheritance law and the tradition of local wisdom. It is a process of dispute resolution inheritance or a compromise on the settlement of inheritance disputes while continuing to do according to Islamic law.

³⁴Supriyadi, *Pilihan Hukum Kewarisan dalam Masyarakat Pluralistik (Studi Komparasi Hukum Islam dan Hukum Perdata)*, Jurnal Al-Adalah, Vol. XII, No. 3, Juni 2015; pp. 554-555.

E. Conclusion

Finally, from all religious experience of Muslims in Palangka Raya regarding inheritance practice, it could be concluded that people in Palangka Raya still divides inheritance according to Islamic law, then recycled property and combined humanitarian values. This is because the scientific facts of tradition of inheritance dispute settlement are bound to aspects of worship that still carry out Islamic law whose provisions are modified through human values in the context of family law. This then gave birth to a new paradigm in resolving inheritance disputes. namely dispute resolution in the sense of fulfilling implementation of inheritance division in accordance with Islamic law then carrying our deliberations by prioritizing the most important aspects. The legal application to resolve the inheritance dispute in the City of Palangka Raya in Central Kalimantan absolutely applies the theory of Islamic legal authority with the principle of peace and adjusting the economic situation. The tradition is carried out in a way that is combined or due process dispute resolution inheritance with a compromise on the settlement of inheritance dispute. The city of Palangka Raya implements the principle *atta'abbudi* in the context of carrying out pharaonic law which also aims at sharia (*maqashid syariah*) to maintain religion (*hifzul din*) then to carry out the principle of *ta'aqquli* in responsive humanitarian-based ijtihaad based on local wisdom values society. Thus,

BIBLIOGRAPHY

- Furqan, Ana Amalia. Alfitri, Alfitri. and Haries, Akhmad, "The Difference of a Child (Walad) Concept in Islamic Inheritance Law and its Implications on The Decisions of the Religious Courts in Indonesia," *Mazahib Jurnal Pemikiran Hukum Islam*, Vol. 17, No. 2, pp. 119-146. 2018.
- Badriyah, Harun, *Panduan Praktis Pembagian Waris*. Yogyakarta: Pustaka Yustisia, 2009.
- Bahri, Saiful, "*Tafsir dan Antropologi Sosial (Sebuah Pendekatan Metodologi; Urgensi, Relevansi, dan Penyalahgunaannya*", paper is presented in regular makalah disampaikan dalam kajian regular FORDIAN (Forum Studi alQur'an) Cairo, in Hay. 7, 2nd October 2007.
- Berry, John W., et al. *Cross-cultural psychology: Research and applications*. Cambridge University Press, 2002.
- Berry, J. W. "20. Psychology of acculturation." *The culture and psychology reader* 457, 1995.
- EmanSuparman, *HukumWaris Indonesia DalamPerspektif Islam, Adatdan BW*, Bandung: RefikaAditama, 2005.
- Dahlan Syarif dan Haryanto Iwan, *Eksistensi ADR dalam Penyelesaian Sengketa Harta Waris Pada Masyarakat Suku Samawa*, *Jurnal IUS Kajian Hukum dan Keadilan*, Vol. IV, No.2, Agustus 2018.
- FatahuddinAzisSiregar, *PembagianHartaWarisanMenurut Al-Qur'an danSunnah*, *JurnalFitrah*, Vol. 8, No. 1, Januari-Juni 2014.
- Habiburrahman, *Rekonstruksi Hukum Kewarisan Islam di Indonesia*, Jakarta: Kencana Prenada Media Group, 2011.
- Hadikusumah Hilman, *Antropologi Hukum Indonesia*, cet. 3rd edition, Bandung: Alumni, 1986

- Halim Abdul, Barkatullah. "Budaya Hukum Masyarakat dalam Perspektif Sistem Hukum." *Jurnal UKSW* 2013.
- Haries, Akhmad, *Analisis Tentang Studi Komparatif Antara Hukum Kewarisan Islam dan Hukum Kewarisan Adat*, Jurnal Fenomena, Vol. 6, No. 2, 2014.
- <https://dishut.kalteng.go.id/page/37/kondisi-daerahhttp://sp2010.bps.go.id/index.php/site/tabel?tid=321&wid=6200000000>
- https://kalteng.go.id/INDO/informasi_umum_kalimantan_tengah.htm
- Ihromi, T.O *Antropologi dan Hukum*, Jakarta: Yayasan Obor Indonesia, 1984
- Jamalie, Zulfa, "Akulturasi dan Kearifan Lokal dalam Tradisi Baayun Maulid pada Masyarakat Banjar", *el-Harakah Journal* Vol 16 No.2 2014
- Kholidah, "qathi'dan zhanni menurut masdar farid mas'udi." *fitriah: Jurnal Kajian Ilmu-ilmu Keislaman* 2.1 pp.19-36, 2016
- <https://jdih.katingankab.go.id>Koentjaraningrat, *Pengantar Ilmu Antropologi*, Rineka Cipta, Jakarta, 2005.
- Komari, *Eksistensi Hukum Waris di Indonesia: Antara Adat dan Syariat*, Jurnal Asy-Syari'ah, Vol. 17, No. 2, Agustus 2015.
- Rasyid, Haras Muh. "Dinamika Hukum Islam Dan Aktualisasi Teori-Teori Berlakunya Hukum Islam Di Indonesia." *DIKTUM: Jurnal Syariah dan Hukum* 11.1: 15-23, 2013.
- Rofiq Ahmad, *Hukum Kewarisan Islam*, Jakarta: Prenada Media, 2004.
- Sa'adah, Lum'atus Sri. "Maqashid Al-Syari'ah Dalam Hukum Kewarisan Islam." *AL-AHWAL* Vol 7. No. 1, 2015.
- Saeed, Abdullah. *Freedom of religion, apostasy and Islam*. Routledge, 2017.

- Sodiqin, Ali, *Antropologi Al-Qur'an, Model Dialektika Wahyu dan Budaya*, Yogyakarta: Arruz Media, 2008.
- Sodiqin, Ali, "Antropologi Hukum sebagai Pendekatan dalam Penelitian Hukum Islam." *Al-Manahij: Jurnal Kajian Hukum Islam* 7.1 2013
- Supriyadi, *Pilihan Hukum Kewarisan dalam Masyarakat Pluralistik (Studi Komparasi Hukum Islam dan Hukum Perdata)*, Jurnal Al-'Adalah, Vol. XII, No. 3, Juni 2015.
- Syamsudin, Muhammad, "Korupsi Dalam Perspektif Budaya Hukum." *Jurnal Fakultas Hukum UII* 30.64, 2007.
- Prasetyo, Basuki Agung, and Sri Wahyu Ananingsih. "Perkembangan Hak Waris Perempuan pada Sistem Kekeluargaan Patrilineal Batak (Studi Kasus Putusan No. 583/pdt. g/2011/pn. jaksel)." *Diponegoro Law Journal* 5.2 pp.1-17, 2016.
- Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa, *Kamus Besar Bahasa Indonesia*, Jakarta: Balai Pustaka, 2008.
- Utami, "Tradisi Masyarakat Muslim Dalam Membagi Harta Warisan Secara Kekeluargaan (Studi Di Kecamatan Jekan Raya Kota Palangka Raya)." *Jurnal Studi Agama dan Masyarakat* 12.2 pp.97-213. 2016.
- Winario, Mohd, "Masalah Hukum Islam Perspektif Sosiologi Antropologi Hukum." *Jurnal Al Himayah* 1.2 pp. 261-276, 2017

